

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 08-1117

ALBERT BROWN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 6, 2009

APPEAL FROM THE RANDOLPH
COUNTY CIRCUIT COURT,
[NO. CR-07-85]

HONORABLE HAROLD S. ERWIN,
JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant Albert Brown appeals the revocation of his probation for which he received a sentence of ten years in prison. For reversal, appellant contends that the trial court erred by allowing the State to introduce evidence of his prior felony convictions during the guilt phase of the hearing. We find no error and affirm.

On August 29, 2007, appellant pled guilty to the offense of possession of a controlled substance, methamphetamine. As a consequence, the trial court placed appellant on probation for three years. On May 19, 2008, the State filed a petition to revoke, alleging that appellant violated the terms and conditions of his probation by admitting that he continued to use methamphetamine and by committing the offenses of possession of drug paraphernalia with the intent to manufacture methamphetamine, possession of methamphetamine with intent to deliver, possession of marijuana, and possession of paraphernalia with intent to use

methamphetamine. The trial court conducted a hearing on the petition to revoke on June 23, 2008.

At the hearing, Richard Rapert, appellant's probation officer, testified that he conducted a visit of appellant's home on May 16, 2008. In the home, Rapert discovered the components of a methamphetamine lab and "aluminum boats," which he described as devices that are used for smoking methamphetamine. In addition, Rapert stated that appellant confessed that he was presently using methamphetamine.

During the State's direct examination, the prosecutor asked Rapert if he had knowledge of appellant's criminal history. Appellant objected, arguing that his criminal record was not relevant to the proceeding. The trial court overruled appellant's objection, and Rapert disclosed that appellant's criminal history included a misdemeanor conviction in 1996 for carrying a prohibited weapon, a felony conviction in 2000 for possession of drug paraphernalia, and a felony conviction in 2002 for delivering drug paraphernalia to a minor. At the conclusion of the hearing, the trial court revoked appellant's probation based on a finding that appellant inexcusably violated the conditions of his probation. In deciding an appropriate sentence, the trial court considered appellant's request to remain on probation so that he could attend a drug rehabilitation program. However, the trial court ultimately refused that request in favor of a ten-year sentence after noting appellant's past convictions for drug-related offenses.

On appeal, appellant contends that the trial court erred by permitting the State to introduce evidence of his criminal record in the guilt phase of trial rather than at the

sentencing phase of trial. He argues that allowing the evidence to be introduced in the guilt phase of trial violates Arkansas Code Annotated section 16-97-101 (Repl. 2006). We reject this argument for several reasons.

First, this argument was not made at the hearing, and we have repeatedly held that arguments not raised below cannot be asserted for the first time on appeal. *Frye v. State*, ___ Ark. ___, ___ S.W.3d ___ (Mar. 5, 2009). Parties cannot change the grounds for objection on appeal, but instead they are bound by the scope and nature of the objections presented in the circuit court. *Buford v. State*, 368 Ark. 87, 243 S.W.3d 300 (2006). Second, the statute that appellant invokes, section 16-97-101, applies to bifurcated proceedings in a jury trial. This case involves a revocation proceeding, and evidence that may be inadmissible in a criminal trial can be admitted during a revocation hearing, where the rules of evidence do not apply. Ark. R. Evid. 1101(b)(3); *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005). Third, even if we believed the testimony was objectionable, we observe that appellant also presented evidence pertinent to sentencing as part of his defense. Consequently, appellant cannot complain that the State's introduction of the testimony concerning his criminal history was premature. *McDonald v. State*, 37 Ark. App. 61, 824 S.W.2d 346 (1992) (holding that objection to testimony was waived when the defendant admitted similar evidence).

For the foregoing reasons, we affirm the revocation of appellant's probation.

Affirmed.

GLOVER and BROWN, JJ., agree.